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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 BATTELLE MEMORIAL
8 INSTITUTE,

9 Plaintiff,

10 v.

11 HANFORD MULTI-EMPLOYER
12 PENSION PLAN, HAMTC
13 REPRESENTED EMPLOYEES;
14 PENSION & SAVINGS PLANS
COMMITTEE c/o MISSION
SUPPORT ALLIANCE, LLC,

Defendants.

NO. 4:17-CV-5080-TOR

ORDER GRANTING MOTION TO
DISMISS; AWARDING ATTORNEY
FEES

15 BEFORE THE COURT is Defendants Hanford Multi-Employer Pension
16 Plan, HAMTC Represented Employees and Pension & Savings Plans Committee's
17 Motion to Dismiss (ECF No. 10). The Motion was submitted for consideration
18 without oral argument. The Court has reviewed the record and files herein, and is
19 fully informed. For the reasons discussed below, the Motion to Dismiss (ECF No.
20 10) is **GRANTED**.

ORDER GRANTING MOTION TO DISMISS; AWARDING ATTORNEY
FEES ~ 1

1 STANDARD OF REVIEW

2 Federal Rule of Civil Procedure 12(b)(6) provides that a defendant may
3 move to dismiss the complaint or a particular claim for “failure to state a claim
4 upon which relief can be granted.” To survive dismissal, a plaintiff must allege
5 “sufficient factual matter, accepted as true, to ‘state a claim to relief that is
6 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell*
7 *Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This requires the plaintiff to
8 provide “more than labels and conclusions, and a formulaic recitation of the
9 elements.” *Twombly*, 550 U.S. at 555.

10 When deciding, the Court may consider the plaintiff’s allegations and any
11 “documents incorporated into the complaint by reference” *Metzler Inv.*
12 *GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049, 1061 (9th Cir. 2008) (citation
13 omitted). Plaintiff’s “allegations of material fact are taken as true and construed in
14 the light most favorable to the plaintiff[,]” but “conclusory allegations of law and
15 unwarranted inferences are insufficient to defeat a motion to dismiss for failure to
16 state a claim.” *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1403 (9th Cir. 1996)
17 (citation and brackets omitted).

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1 BACKGROUND¹

2 The instant action involves Plaintiff Battelle Memorial Institute (“Battelle”)
3 and its liability for withdrawing from the Hanford Multi-Employer Pension Plan,
4 HAMTC Represented Employee (“Hanford Plan”) administered by Hanford
5 Pension & Savings Plans Committee (“Plan Administrator”) and governed by the
6 Employee Retirement Security Act of 1974 (“ERISA”), as amended by the
7 Multiemployer Pension Plan Amendments Act (“MPPAA”). ECF No. 1 at ¶ 1.

8 Pursuant to ERISA, employers participating in a pension plan subject to
9 ERISA are subject to withdrawal liability upon withdrawal from the plan. This
10 liability arises because the employer’s departure leaves the plan with unfunded
11 liabilities in the form of future pension benefits to the withdrawing employer’s
12 employees. *See* 29 U.S.C. § 1381. The amount of withdrawal liability is
13 calculated according to a formula provided by ERISA. *See* 29 U.S.C. §§ 1382,
14 1391(c).

15 Battelle participated in the Hanford Plan – an ERISA governed plan – as an
16 employer for some time, but decided to withdraw from the Hanford Plan after an
17 underlying collective bargain agreement allowed Battelle to sponsor its own
18

19 ¹ The background facts are gleaned from Plaintiff’s Complaint (ECF No. 1)
20 and the exhibits included with the Complaint.

1 employer plan. ECF No. 1 ¶¶ 15-17. Battelle withdrew from the Hanford Plan on
2 July 1, 2016. ECF No. 1 at ¶ 18.

3 Before Battelle's ultimate withdrawal, the Hanford Plan's actuary provided a
4 withdrawal liability estimate to Plaintiff of "'approximately \$14,200,000,' with the
5 final withdrawal liability to be based on final December 31, 2015 assets and actual
6 January 1, 2016 valuation results." ECF No. 1 at ¶¶ 19-21. In June of 2016, the
7 parties entered into a Settlement Agreement obligating Battelle to "make a
8 withdrawal liability payments totaling 'approximately \$14,200,000' on or before
9 June 30, 2017." ECF No. 1 at ¶¶ 22-23; *see* ECF No. 1 at 15 (Settlement
10 Agreement). As Plaintiff states, "[t]he term 'approximately' was used by the
11 parties in the Settlement Agreement to account for adjustments for the final value
12 of the Hanford plan assets as of December 31, 2015, and the January 1, 2016
13 actuarial valuation results." ECF No. 1 at ¶ 24.

14 According to the Complaint, "[i]n a letter to MSA, on behalf of the Plan
15 Administrator, dated September 2, 2016, [the actuary] determined that Battelle's
16 withdrawal liability that was previously estimated to be \$14,200,000 should be
17 adjusted to \$14,784,602 based on the final asset and liability calculations
18 contemplated by Battelle and the Hanford Plan." ECF No. 1 at ¶ 28. However, the
19 letter actually states that the withdrawal liability is "\$15,407,693, \$623,091 of
20

1 which is due to the contributions made by Battelle Toxicology Northwest
2 (‘BTNW’)² during the plan years 2011, 2012 and 2013.” ECF No. 1 at 42.

3 On December 1, 2016, Battelle submitted a request for review disputing
4 *only* the \$623,091 while paying the undisputed portion of the assessment in the
5 amount of \$14,784,602. ECF No. 1 at ¶¶ 28, 32; *see* ECF No. 1 at 58 (Letter).
6 The Hanford Plan responded in a letter dated March 20, 2017. ECF No. 1 at 62.
7 On May 18, 2017, Battelle initiated arbitration regarding the disputed amount
8 “pursuant to Section 4221(a) of ERISA.” ECF No. 1 at ¶ 35.

9 On June 12, 2017, Battelle filed this action requesting a declaratory
10 judgment that Defendants did not have the authority to assess the disputed
11 withdrawal liability based on calculations including BTNW employees. ECF No.

13 ² According to Plaintiff, BTNW “was, until 2013, a separate business unit of
14 Battelle that operated out of the Pacific Northwest National Laboratory (‘PNNL’)
15 facilities”; “[c]ertain hourly employees at Battelle Toxicology were represented by
16 HAMTC and were active participants in the Hanford Plan until 2013”; and “[f]or
17 the period from 2007 to 2013, the contributions for the Battelle Toxicology
18 participants in the Hanford Plan were paid directly by the contributing employer,
19 Battelle.” ECF No. 1 at ¶ 10.

1 1 at ¶¶ 38-43. Battelle also included a claim for breach of contract, asserting
2 Defendants breached the Settlement Agreement in assessing the disputed
3 withdrawal liability.

4 Defendants now move to dismiss the case, arguing the action involves a
5 dispute about the establishment and calculation of the withdrawal liability—an
6 issue subject to mandatory arbitration under ERISA. *See* ECF Nos. 10; 12.
7 Battelle opposes the Motion, arguing the instant dispute merely involves a question
8 of whether Defendants have the authority to assess the disputed withdrawal
9 liability. ECF No. 11 at 3.

10 DISCUSSION

11 The scope of mandatory arbitration in the ERISA context is governed by
12 statute:

13 Any dispute between an employer and the plan sponsor of a multiemployer
14 plan concerning a determination made under sections 1381 through 1399 of
15 the Multiemployer Pension Plan Amendments shall be resolved through
arbitration.

16 29 U.S.C. § 1401(a)(1) (emphasis added). The parties agree that issues concerning
17 the establishment, calculation, and collection of withdrawal liability are subject to
18 arbitration. *See* ECF No. 11 at 10 (Plaintiff's Response) (citing *Operating*
19 *Engineers' Pension Trust Fund v. Clark's Welding and Machine*, 688 F. Supp. 2d
20 902 (N.D. Cal. Feb. 10, 2010)).

1 The instant action is clearly a dispute about the establishment and
2 calculation of Plaintiff's withdrawal liability and is thus subject to mandatory
3 arbitration. Plaintiff attempts to cast the instant dispute as merely an issue of
4 contract interpretation, but this is not the case. Although Plaintiff points to
5 contract language stating there will be no further withdrawal liability,³ among other
6 things, this cannot undermine the clear language that the amount of \$14,200,000
7 was an approximation of the ultimate withdrawal liability to be determined by
8 future calculation. This calculation is what Plaintiff now disputes under the guise
9 of interpreting the word "approximate" in the Settlement Agreement.⁴

11 ³ Plaintiff cites the language in the Settlement Agreement that states the
12 Agreement "shall be in complete and full satisfaction of any withdrawal liability
13 that may otherwise be incurred, imposed or assessed against Battelle with respect
14 to the Hanford Plan for any reason." ECF No. 1 at ¶ 26.

15 ⁴ Without any real explanation, Plaintiff argues the term "approximately . . .
16 did not contemplate that the Hanford Plan would include additional pools of
17 former Battelle employees in allocating the unfunded vested benefits to Battelle."
18 ECF No. 1 at ¶ 25. There is nothing in the Settlement Agreement indicating such a
19 limitation on the manner of calculating the withdrawal liability, which is regulated
20 by statute.

1 Plaintiff's contention that "the Hanford Plan lacked authority to make a
2 Post-Settlement Assessment[,]" ECF No. 11 at 9, is inconsistent with its own
3 conduct in paying part of what it calls the Post-Settlement Assessment. Battelle
4 paid the Hanford Plan \$14,784,602 for its withdrawal liability, ECF No. 11 at 12,
5 which exceeded the initial estimate of \$14,200,000, and only disputes the inclusion
6 of additional pools of employees in the calculation. ECF No. 1 at ¶ 25. This
7 undermines Battelle's position that the amount of withdrawal liability was a settled
8 issue and that Defendants lacked authority to assess the later-determined
9 withdrawal liability.⁵

10 Accepting Battelle's position that the Hanford Plan did not have the
11 authority to assess the disputed withdrawal liability would require the Court to
12 accept Battelle's underlying premise that the Settlement Agreement was a deal
13 allowing Battelle to evade withdrawal liability assessed pursuant to ERISA—after

14 ⁵ Moreover, Battelle essentially concedes the dispute is subject to mandatory
15 arbitration. According to the complaint, Battelle initiated arbitration over the
16 disputed amount "pursuant to Section 4221(a) of ERISA." ECF No. 1 at ¶ 35.
17 This section is limited to disputes "concerning a determination made under
18 sections 1381 through 1399 of this title"—the very scope of the arbitration
19 mandate.
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1 all, Battelle has not argued the liability arising from the “additional pools” is not
2 valid per ERISA, rather Battelle argues Defendants cannot assess such liability per
3 the Settlement Agreement. First, Battelle’s own letter indicates the intent was not
4 to evade liability, but was rather to determine the *actual* liability at an earlier date.
5 ECF No. 1 at 59 (“By entering into the Settlement Agreement before the complete
6 withdrawal had actually occurred, Battelle was attempting to obtain an early
7 determination by the Hanford Plan of the amount of withdrawal liability.”).
8 Second, if the parties’ intent was to evade actual withdrawal liability, the Court
9 cannot enforce such an agreement—Congress mandated withdrawal liability to
10 protect the plan’s otherwise unfunded liabilities and this cannot simply be
11 contracted around. 29 U.S.C. § 1392(c) (1982) (“If a principal purpose of any
12 transaction is to evade or avoid liability under this part, this part shall be applied
13 (and liability shall be determined and collected) without regard to such
14 transaction.”).

15 Plaintiff also includes a claim for breach of contract arising out the disputed
16 assessment. Casting withdrawal liability as a breach of contract does not bypass
17 ERISA’s mandatory arbitration provision.

18 As an additional matter, Defendants moved for attorney fees pursuant to
19 Section 502(g)(1) of ERISA, 29 U.S.C. § 1132, and Section 4301 of the MPPAA,
20 29 U.S.C. § 1451, which give the Court discretion to award costs and expenses,

1 including reasonable attorney fees, to the prevailing party who is adversely
2 affected by the act or omission of a party with respect to a multiemployer plan. 29
3 U.S.C. § 1132(g); 29 U.S.C. § 1451(a), (e); *Penn Cent. Corp. v. Western*
4 *Conference of Teamsters Pension Trust Fund*, 75 F.3d 529, 535 (9th Cir. 1996).
5 The Court finds (1) Plaintiff's suit is clearly subject to mandatory arbitration and
6 that Plaintiff's contention otherwise is unfounded; (2) Defendants are the
7 prevailing parties; (3) an award of costs and expenses, including attorney fees, to
8 Defendants is just and proper; and (4) the Court has discretion to award such fees
9 pursuant to ERISA and the MPPAA. As Defendants have only requested fees
10 incurred in bringing the Motion to Dismiss, ECF No. 10 at 17, the award is limited
11 to such.

12 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 13 1. Defendants' Motion to Dismiss (ECF No. 10) is **GRANTED**.
- 14 2. Defendants are entitled to costs and expenses, including attorney fees, in
15 bringing the Motion to Dismiss. **Within 14 days** of this Order,
16 Defendant's shall file a properly supported fee petition, substantiating the
17 reasonableness of the hours and rate sought, and any costs. Plaintiff may
18 file a response and Defendant may file a reply according to LR 7.1.
- 19 3. The fee request shall be heard without oral argument on **December 8,**
20 **2017.**

1 4. The Clerk of Court shall delay entry of Judgment pending resolution of
2 attorney fees, costs and expenses.

3 The District Court Executive is directed to enter this Order, furnish copies to
4 counsel.

5 **DATED** October 27, 2017.



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Thomas O. Rice
THOMAS O. RICE
Chief United States District Judge